Trim Systems, Inc., and Jenkins Design Systems, Inc. *and* Local 1234, United Brotherhood of Carpenters and Joiners of America, AFL–CIO. Case 7–CA–36837 (1)(2)

January 17, 1997

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING AND FOX

Upon charges filed by the Union on February 13, 1995, the General Counsel of the National Labor Relations Board issued a consolidated complaint (complaint) on March 30, 1995, against Trim Systems, Inc. (Respondent TS) and Jenkins Design Systems Incorporated (Respondent JD), alter egos, collectively (the Respondents), alleging that they have violated Section 8(a)(5) and (1) of the National Labor Relations Act.

Thereafter, on March 14, 1996, the Regional Director for Region 7 approved a settlement agreement that provided that ''Approval of this Agreement by the Regional Director shall constitute withdrawal of any Complaint(s) and Notice of Hearing heretofore issued in this case, as well as any answer(s) filed in response.'' On August 30, 1996, the Regional Director issued an Order Setting Aside Settlement Agreement and Reissuing Consolidated Complaint and Notice of Hearing. Although properly served copies of the charges and the reissued complaint, the Respondents failed to file an answer.

On December 6, 1996, the General Counsel filed a Motion for Default Summary Judgment with the Board. On December 10, 1996, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondents filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint reissued on August 30, 1996, affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Default Summary Judgment disclose that the Region, by letter dated September 27, 1996, notified the Respondents that unless an answer were received by October 11, 1996, a Motion for Default Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Default Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times until about December 31, 1994, Respondent Trim Systems, Inc., a corporation, operated an office and place of business at 2643 East Michigan Avenue, Ypsilanti, Michigan and, at all material times, between January 1, 1994, and December 31, 1994, was engaged in the construction business, providing trim carpentry services to various customers and to general contractors at various jobsites within the State of Michigan. At all material times, Respondent Jenkins Design Systems, Inc., a corporation with an office and place of business at 2643 East Michigan Avenue, Ypsilanti, Michigan, has been engaged in the construction business, providing trim carpentry and general contracting services to various customers and to contractors at various jobsites within the State of Michigan.

During the 1994 calendar year, Respondent TS, in conducting its business operations, performed services valued in excess of $50,000 for various enterprises located within the State of Michigan including Pumford Construction Company (Pumford). At all material times Pumford operated an office and place of business in Saginaw, Michigan, and has been engaged in the residential construction business and retail sale of residential units to various customers. During the 1994 calendar year, Pumford had gross revenues in excess of $500,000 and purchased goods and materials valued in excess of $50,000, and caused said goods and materials to be shipped directly to its Michigan facility and/or its Michigan jobsites from points located outside the State of Michigan.

At all material times, Respondent JD, in conducting its business operations, had gross revenues in excess of $300,000 and provided services valued in excess of $50,000 to Rodney Lockwood & Company (Lockwood). At all material times, Lockwood operated an office and place of business in Birmingham, Michigan, and has been engaged in residential construction for various customers. During the 1994 calendar year, Lockwood had gross revenues in excess of $500,000, and purchased goods and materials valued in excess of $50,000, and caused said goods and materials to be shipped directly to its Michigan facility and/or Michigan jobsites from points located outside the State of Michigan.

At all material times since 1993, Respondent JD and Respondent TS have been affiliated business enterprises with common management and supervision, have formulated and administered a common labor policy, have shared common premises and facilities, have provided services for and/or made sales to each other, have interchanged personnel with each other, and have utilized common phones, job bidding procedures, payroll services, and attorney services, and have otherwise demonstrated that they are a single-integrated business enterprise. Based on its operations, Respondent TS and Respondent JD constitute a single-integrated business enterprise and alter egos within the meaning of the Act.

We find that Respondent TS and Respondent JD have been employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of Respondent TS constitute a unit (the TS unit) appropriate for the purposes of collective bargaining within the meaning of the Act:

> All full-time and regular part-time carpenter employees employed by Respondent TS in residential construction work at its various jobsites involving residential construction in Wayne, Oakland, Macomb, Sanilac, St. Clair, Monroe, Washtenaw, Livingston, Genesee, Lapeer, Tuscola, and Huron counties; but excluding all office clerical employees, guards and supervisors as defined in the Act.

The following employees of Respondent JD constitute a unit (the JD unit) appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time carpenter employees employed by Respondent JD in residential construction work at its various jobsites involving residential construction in Wayne, Oakland, Macomb, Sanilac, St. Clair, Monroe, Washtenaw, Livingston, Genesee, Lapeer, Tuscola, and Huron counties; but excluding all office clerical employees, guards and supervisors as defined in the Act.

At all material times, the Association of Carpentry Contractors (the Association) has been an organization composed of various employers engaged in the construction industry, one purpose of which is to represent its employer-members in negotiating and administering collective-bargaining agreements with various labor organizations, including the Union.

About August 15, 1993, the Association and the Union entered into a collective-bargaining agreement, the Carpenter's Residential Agreement, effective by its terms from August 15, 1993, until August 15, 1994. About May 18, 1994, Respondent TS entered into a ''me too'' agreement, by virtue of its being signatory to the Association agreement as an individual employer, and thereby adopted the Carpenter's Residential Agreement. About August 15, 1994, this agreement signed by Respondent TS automatically renewed itself for an additional year, inasmuch as neither party gave the other party sufficient notice to forestall the automatic renewal clause. Respondent TS, an employer engaged in the building and construction industry, granted recognition to the Union as the exclusive collective-bargaining representative of the TS unit without regard to whether the majority status of the Union had ever been established under the provisions of Section 9(a) of the Act. Such recognition has been embodied in a continuation of the initial collective-bargaining agreement described above. At all times between May 19, 1994, and about December 31, 1994, based on Section 9(a) of the Act, the Union has been the limited exclusive collective-bargaining representative of the TS unit. At all times since about December 31, 1994, based on Section 9(a) of the Act the Union has been the limited exclusive collective-bargaining representative of the JD unit.

Since about August 13, 1994, Respondent TS has refused to pay contractually mandated fringe benefits, including vacation and holiday pay, insurance (health and welfare), and pension benefits owing for TS unit employees, to said employees and/or the appropriate fringe benefits funds. Since about August 13, 1994, Respondent TS has refused to submit monthly fringe benefit reports for TS unit employees to the Union.[1]

About December 31, 1994, Respondent TS ceased doing business and unilaterally transferred the unit employees to the employ of Respondent JD. Respondent TS took such action without notice to and/or bargaining with the Union with respect to the decision and/or the effects of the closing.

Since about January 1, 1995, Respondent JD has utilized substantially the same work crews, supervision, and labor relations policies as that of Respondent TS and performed work for the same contractors at the same jobsites as that previously performed by Respondent TS. Since about January 1, 1995, Respondent JD has conducted its business operations in an essentially unchanged manner from that of Respondent TS with respect to the performance of residential carpentry work, and has thereby been operating as an alter ego of Respondent TS. Respondent TS and its alter ego

[1] The complaint fails to allege that these reports are contractually mandated. Accordingly, we are unable to find that the failure to submit these reports is a violation of the Act. In any event, the Respondents are ordered to comply with the terms of the collective-bargaining agreement which will include any updating requirements contained therein.

Respondent JD took this action in order to evade its contractual obligations under the collective-bargaining agreement described above and in order to avoid dealing with the Union.

Since about January 1, 1995, Respondent JD has refused to pay contractually mandated fringe benefits, including vacation and holiday pay, insurance (health and welfare), and pension benefits owing for unit employees, to said employees and/or to the appropriate fringe benefits funds. Respondent JD took this action and has thereby repudiated its contractual obligations under the collective-bargaining agreement. Since about January 1, 1995, Respondent JD has refused to submit monthly fringe benefits reports for said unit employees to the Union.

CONCLUSION OF LAW

By the acts and conduct described above, Respondent TS and Respondent JD have been failing and refusing to bargain collectively and in good faith with the limited exclusive collective-bargaining representative of their employees, and have thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondents have engaged in certain unfair labor practices, we shall order them to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondents have violated Section 8(a)(5) and (1) by repudiating the collective-bargaining agreement and by, failing, since about August 13, 1994, to pay contractually required fringe benefits, including vacation and holiday pay, insurance (health and welfare), and pension benefits owing for unit employees, to said employees and/or to the appropriate fringe benefits funds, we shall order the Respondents to give effect to the terms of the collective-bargaining agreement and to make whole their unit employees by paying the unit employees, with interest, the amounts the Respondents have failed to pay and by making all such delinquent contributions to the appropriate fringe benefits funds, including any additional amounts due the funds in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979). In addition, the Respondents shall reimburse unit employees for any expenses ensuing from their failure to make the required contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971). Interest is to be paid as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).[2]

In addition, having found that the Respondent TS, about December 31, 1994, ceased doing business and unilaterally transferred the TS unit employees to the employ of Respondent JD without notice to or bargaining with the Union with respect to the decision and/or the effects of the closing and in order to evade its contractual obligations under the collective-bargaining agreement, we shall order the Respondents to restore the operation as it existed prior to December 31, 1994, including offering to reinstate to their same or substantially equivalent positions of employment, all unit employees, if any, laid off as a consequence of the December 31, 1994 closure, displacing if necessary, any persons hired since December 31, 1994, provided that nothing in this order shall preclude Respondent TS, after it has complied with the terms of this Order, from changing its operation for lawful reasons, provided that it has fulfilled any obligation to bargain with the Union regarding such decision or its effects. Any such laid-off employees shall be made whole for any loss of earnings and other benefits suffered as a result of the unlawful layoffs. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, supra.

ORDER

The National Labor Relations Board orders that the Respondents, Trim Systems, Inc. and Jenkins Design Systems, Inc., alter egos, Ypsilanti, Michigan, their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Repudiating their collective-bargaining agreement with the Union and refusing to pay contractually mandated fringe benefits, including vacation and holiday pay, insurance (health and welfare), and pension benefits owing for the following unit employees, to said employees and/or the appropriate fringe benefits funds:

> All full-time and regular part-time carpenter employees employed by Respondent Trim Systems, Inc. in residential construction work at its various jobsites involving residential construction in Wayne, Oakland, Macomb, Sanilac, St. Clair, Monroe, Washtenaw, Livingston, Genesee, Lapeer, Tuscola, and Huron counties; but excluding all office clerical employees, guards and supervisors as defined in the Act.

[2] To the extent that an employee has made personal contributions to a fund that are accepted by the fund in lieu of the Respondents' delinquent contributions during the period of the delinquency, the Respondents will reimburse the employee, but the amount of such reimbursement will constitute a setoff to the amount that the Respondents otherwise owe the fund.

All full-time and regular part-time carpenter employees employed by Respondent Jenkins Design Systems, Inc. in residential construction work at its various jobsites involving residential construction in Wayne, Oakland, Macomb, Sanilac, St. Clair, Monroe, Washtenaw, Livingston, Genesee, Lapeer, Tuscola, and Huron counties; but excluding all office clerical employees, guards and supervisors as defined in the Act.

(b) Ceasing doing business and unilaterally transferring unit employees without notice to and/or bargaining with the Union with respect to the decision and/or the effects of the closing and in order to evade its contractual obligations under the collective-bargaining agreement.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Give effect to the terms of the collective-bargaining agreement with the Union, effective from August 15, 1993, until August 15, 1995, and make whole the unit employees by paying them and/or the fringe benefit funds all amounts the Respondents have failed to pay, such as the contractually required fringe benefits, including vacation and holiday pay, insurance (health and welfare), and pension benefits, in the manner set forth in the remedy section of this decision.

(b) Restore the Respondents' operation as it existed prior to December 31, 1994, including offering to reinstate to their same or substantially equivalent positions of employment, all unit employees, if any, laid off as a consequence of the December 31, 1994 closure, displacing if necessary, any persons hired since December 31, 1994, provided that nothing in this Order shall preclude Respondent TS, after it has complied with the terms of this Order, from changing its operation for lawful reasons, provided that it has fulfilled any obligation to bargain with the Union regarding such decision or its effects.

(c) Make whole any unit employee laid off as a result of the unilateral closure for any loss of earnings and other benefits suffered as a result of the unlawful layoffs, in the manner set forth in the remedy section of this decision.

(d) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amounts due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in Ypsilanti, Michigan, copies of the attached notice marked ''Appendix.''[3] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since February 13, 1995.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. January 17, 1997

William B. Gould IV,	Chairman
Margaret A. Browning,	Member
Sarah M. Fox,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[3] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT repudiate our collective-bargaining agreement with the Union or refuse to pay contractually mandated fringe benefits, including vacation and holiday, insurance (health and welfare), and pension benefits owing for the following unit employees, to

said employees and/or the appropriate fringe benefits funds:

> All full-time and regular part-time carpenter employees employed by Trim Systems, Inc. in residential construction work at its various jobsites involving residential construction in Wayne, Oakland, Macomb, Sanilac, St. Clair, Monroe, Washtenaw, Livingston, Genesee, Lapeer, Tuscola, and Huron counties; but excluding all office clerical employees, guards and supervisors as defined in the Act.
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> All full-time and regular part-time carpenter employees employed by Jenkins Design Systems, Inc. in residential construction work at its various jobsites involving residential construction in Wayne, Oakland, Macomb, Sanilac, St. Clair, Monroe, Washtenaw, Livingston, Genesee, Lapeer, Tuscola, and Huron counties; but excluding all office clerical employees, guards and supervisors as defined in the Act.

WE WILL NOT cease doing business and unilaterally transferring unit employee(s) without notice to and/or bargaining with the Local 1234, United Brotherhood of Carpenters and Joiners of America, AFL–CIO with respect to the decision and/or the effects of the closing of Trim Systems, Inc. and in order to evade our contractual obligations under the collective-bargaining agreement.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL give effect to the terms of the collective-bargaining agreement with the Union, effective from August 15, 1993, until August 15, 1995, and make whole the unit employees by paying them and/or the fringe benefit funds all amounts we have failed to pay, such as the contractually required fringe benefits, including vacation and holiday pay, insurance (health and welfare), and pension benefits, in the manner set forth in a decision of the National Labor Relations Board.

WE WILL restore the operations of Trim Systems, Inc. as they existed prior to December 31, 1994, including offering to reinstate to their same or substantially equivalent positions of employment, all unit employees, if any, laid off as a consequence of the December 31, 1994 closure, displacing if necessary, any persons hired since December 31, 1994, provided that nothing in this order shall preclude Trim Systems, Inc., after we have complied with the terms of this order, from changing our operation for lawful reasons, provided that we have fulfilled any obligation to bargain with the Union regarding such decision or its effects.

WE WILL make whole any unit employee laid off as a result of the unilateral closure for any loss of earnings and other benefits suffered as a result of the unlawful layoffs, in the manner set forth in a decision of the National Labor Relations Board.

TRIM SYSTEMS, INC. AND JENKINS DESIGN SYSTEMS, INC.